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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/520).

The Counter-Terrorism Committee has received the attached supplementary report from Ecuador, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Letter dated 22 July 2002 from the Permanent Representative of Ecuador to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In reference to your letter of 1 May 2002, transmitting the preliminary comments of the Counter-Terrorism Committee on the report submitted by Ecuador pursuant to paragraph 6 of Security Council resolution 1373 (2001), I have the honour to attach herewith the additional information requested from the Government of Ecuador (see enclosure).

(*Signed*) Luis Gallegos **Chiriboga**
Ambassador
Permanent Representative of Ecuador to the United Nations

Enclosure

Report of the Republic of Ecuador to the Counter-Terrorism Committee of the Security Council pursuant to resolution 1373 (2001)*

Quito, 17 July 2002

Subparagraph 1 (a):

Could Ecuador please describe the measures in place or proposed to be taken after ratification of the International Convention for the Suppression of the Financing of Terrorism to comply with this subparagraph?

The International Convention for the Suppression of the Financing of Terrorism, signed by Ecuador on 10 January 2000, is in the process of parliamentary approval prior to its ratification.

Since the signing of this document, however, legal reforms have been introduced to penalize the crime of terrorism as a basis for the penalization of related crimes, including the financing of terrorism.

Accordingly, Act No. 2001-47, R.O. 422, of 28 September 2001, introduced amendments to chapter IV, on the crimes of sabotage and terrorism, Title I, of the Penal Code (see annex 1).

Subparagraph 1 (b):

Please provide a progress report on the work relating to the revision of the Penal Code in regard to the requirements of the resolution.

Without prejudice to the reforms referred to in the previous paragraph, an inter-agency committee was formed, composed of representatives of the National Congress, the Supreme Court of Justice, the Office of the Procurator-General, the Public Prosecutor's Office, the Ministry of Government and Police, the Superintendency of Banks and Insurance, the National Council on Narcotic Drugs and Psychotropic Substances and other supervisory bodies connected with the administration of criminal justice; this Committee is responsible for studying, analysing and proposing revisions to the Penal Code for the purpose of formulating new criminal categories relating to terrorism that would incorporate the provisions of the above-mentioned United Nations resolution.

On 13 July 2001, the new Code of Criminal Procedure entered into force. It incorporates a prosecutorial system that allows for the enforcement of criminal law more smoothly and efficiently by the higher and lower Ecuadorian courts.

Furthermore, the revisions of the Penal Code that entered into force in Ecuadorian law on 28 September 2001 provide for the tightening and accumulation of penalties up to a maximum of 35 years for offences punishable by special long-term rigorous imprisonment.

* The annexes are on file with the Secretariat and are available for consultation.

The revisions also eliminated the benefit whereby each year of a sentence could be counted as two. Henceforth, to obtain a year's reduction, five years of the sentence must be completed.

Ecuador signed the Rome Statute establishing the International Criminal Court. It was ratified and has been in full force since 31 January 2002. In June 2002, Ecuador signed the Inter-American Convention against Terrorism, for which the ratification procedure will soon begin.

Subparagraph 1 (c):

Please outline the provisions of the relevant law that enables authorities in Ecuador to freeze funds, financial assets and other economic resources of persons and entities, either resident or non-resident, linked to terrorism and terrorist acts.

The inter-agency committee responsible for studying, analysing and proposing revisions to the Penal Code for the purpose of characterizing new offences relating to terrorism will add provisions relating to the financing of terrorism, incorporating the relevant reforms into other laws.

As a point of reference, it should be noted that the following provisions exist in the Ecuadorian legal system: article 3, paragraph 10 of the Act on Narcotic Drugs and Psychotropic Substances, referring to the scope of the Act, provides that the conversion or transfer of assets (money-laundering) must be opposed; similarly, article 77 of the same Act establishes the penalties applicable to the perpetrator and accomplices before and after the fact for offences committed in connection with money-laundering.

Article 104 of this Act provides for the impounding or seizure by the competent authority (criminal court judge), and final confiscation by enforceable sentence, of all movable and immovable goods, money, securities, monetary instruments, bank, financial or commercial documents and other assets that are judged to be a product of the commission of the acts characterized in this Act. The precautionary measures that may be taken by the criminal court judge or other competent judge consist of: retention, attachment or a ban on the transfer of assets, under articles 159 and 191 of the Code of Criminal Procedure.

Subparagraph 1 (d):

Is there any law in Ecuador that prohibits individuals or entities from making available funds, etc., in support of terrorist acts?

Article 147 of the Ecuadorian Penal Code, in book II, title I, chapter II, "Offences against the internal security of the State", imposes penalties of 8 to 12 years ordinary rigorous imprisonment on anyone who promotes or participates in guerrilla organizations, commandos, combat groups or terrorist cells whose purpose is to subvert public order, while obeying instructions from foreign sources and receiving support or economic assistance from abroad; article 151 criminalizes the receipt of money for subversive purposes and establishes a prison sentence of three months to two years, with the proceeds of the confiscation of these assets to be used for national defence.

Article 200 of the Codification of the General Act on Institutions of the Financial System requires financial institutions to maintain internal controls to prevent any operations which, under Ecuadorian law and international recommendations, are considered to have resulted from unlawful acts.

Article 30 of the same Act, which covers the rights and duties of the board of directors of a financial institution, provides that the board must approve the reports of the internal auditor with respect to compliance with rules to prevent money-laundering.

Article 1 of title VIII, subtitle IV, chapter II, of the Codification of Resolutions of the Superintendency of Banks and Insurance and of the Board of the Central Bank, on "Rules for the prevention of the laundering of the proceeds from unlawful activities on the part of institutions under the supervision of the Superintendency of Banks, reads as follows: "The institutions of the financial system are required to take appropriate and sufficient control measures to prevent these institutions, in carrying out their operations, from being used as an instrument for hiding, managing, investing or using in any way money or other proceeds from activities connected with drug trafficking, or transactions and funds connected with such activities".

In relation to the foregoing, mechanisms exist which allow for some form of control over the supply of money or resources through the financial system that could be diverted at any given time to the commission of various offences, including terrorism.

Are financial institutions, financial intermediaries, lawyers, notaries and other natural and legal persons required to report on suspicious transactions to the relevant public authorities?

By virtue of the public right of action, anyone who learns of the commission of a crime is required to report this fact to the competent authorities, on penalty of incurring responsibility, or even criminal liability, depending on the circumstances of the events, under article 42 of the Code of Criminal Procedure.

In the specific case of the financial system, and with regard to the Superintendency of Banks and Insurance, article 93 of the General Act on Institutions of the Financial System requires the Superintendent of Banks to inform the Public Prosecutor's Office of the facts indicating that an unlawful act relating to the activities of the financial institutions has been committed. The Superintendency of Banks and Insurance may participate as a contending party in any related judicial proceedings.

Section II, article 2, of the Codification of Resolutions of the Superintendency of Banks and Insurance and of the Board of the Central Bank provides that the institutions of the financial system must submit a monthly summary report to the National Council on Narcotic Drugs and Psychotropic Substances on transactions equal to or exceeding $10,000 or the equivalent in other foreign currency.

The inter-agency committee mentioned in the reply concerning subparagraph 1 (b) is responsible for introducing the relevant reforms covering specific obligations to report suspicious transactions.

What laws and practical controls and surveillance measures exist to ensure that funds and other economic resources collected for religious, charitable or cultural purposes are not diverted for other purposes, particularly for financing terrorism?

The legal framework — societal, economic, financial and accounting — in which the Superintendency of Companies operates does not allow it to check the origin and destination of funds and other economic resources received by entities and agencies such as those mentioned, including non-governmental organizations (NGOs), which have a very different legal position to that of a company. Since the ultimate purpose of such entities and agencies is not commercial but rather religious, humanitarian or cultural, among others, their establishment, existence and control are regulated by the competent State bodies.

The current legal situation in this matter requires the above-mentioned inter-agency committee to take responsibility for submitting a bill to regulate the activities of NGOs.

Despite the foregoing, it should be noted that it has been an ongoing concern of the Superintendency of Companies, as the supervisory body for corporations domiciled in Ecuador, to ensure that the legal and technical provisions under which it operates are appropriate to the country's needs in general, and to those of the relevant corporate entities in particular; a number of reform bills have therefore been submitted to the National Congress, especially in reference to the Act on Companies, and/or the passing of new laws, such as those relating to the stock market, bankruptcy reorganization, arbitration and mediation, and also including, at the internal level, company rules and regulations.

Subparagraph 2 (a):

Please describe the legal and other measures in Ecuador that regulate the manufacture, sale, possession, storage and transport of weapons and explosives in Ecuador.

The manufacture, sale, possession, storage and transport of weapons and explosives in Ecuador are regulated by the Act on the Manufacture, Import, Export, Sale and Possession of Weapons, Ammunition, Explosives and Related Materials, published in *Official Gazette* No. 311 of 7 November 1980, and the Regulation for the Establishment and Operation of Private Security Organizations, published in *Official Gazette* No. 257 of 13 February 1998.

Currently under consideration in the National Congress is a bill on private surveillance and security, submitted by the armed forces, and a preliminary bill has been drawn up that would establish an aeronautical police force, composed of members of the air force, for the purpose of controlling airport security.

The Combined Armed Forces Command is issuing directives to promote more efficient control of activities relating to weapons, ammunition, explosives and related materials. A computerized database is being set up, which covers the military zones throughout the country.

Article 8 (e) of the Basic Law on Customs provides that customs officials have the right to "confiscate objects and publications that endanger the security of the State, public health or morals, in accordance with the relevant laws and regulations".

Article 122 (g) of this Act, which lists the functions and powers of the Customs Surveillance Service, the specialized surveillance arm of the Ecuadorian Customs Corporation, provides for "Collaboration in controlling the illicit trafficking of narcotic drugs, psychotropic substances and precursors, weapons, ammunition and explosives, in primary and secondary zones". This collaboration is carried out directly by trained personnel from the National Police, in this case Interpol, and members of the Intelligence Service of the armed forces.

How is international trade in weapons and explosives regulated in Ecuador?

International trade in weapons and explosives is governed and regulated by the Act on the Manufacture, Import, Export, Sale and Possession of Weapons, Ammunition, Explosives and Related Materials, and the regulations pertaining thereto.

The Ecuadorian Customs Corporation checks to ensure that imports or exports related to such material have been previously authorized by the Combined Armed Forces Command. For each item imported, a physical appraisal is made to verify the customs declaration.

The Ecuadorian Customs Corporation checks the qualitative value and quantitative amounts of all types of imports and exports, compiling information which can be consulted in order to compare the indexes on trade of this type of merchandise with those registered by the Combined Armed Forces Command.

Subparagraph 2 (b):

Please describe the mechanisms that Ecuador has in place to provide early warning to other Member States of anticipated terrorist activity.

A number of mechanisms exist for the exchange of information between the Ministry of Defence, the National Police, special agencies and the intelligence organizations of various countries, including Ecuador, in which computerized systems are used for the exchange of high-security information allowing for early warning of anticipated terrorist activities.

Subparagraph 2 (c):

Please outline the procedures and the relevant legal provisions that enable Ecuador to prevent persons supporting terrorism from seeking safe haven in Ecuador.

In accordance with article 1 F (a) and (b) of the Geneva Convention of 1951, the Government of Ecuador does not grant international protection to any person who:

(a) Has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;

(b) Has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee.

This legal framework is directly related to article 14 (a), (b) and (c) of the Regulations for the Application of the 1951 Geneva Convention on the Status of

Refugees (Decree No. 3301 of 6 May 1992). This document provides that no one who has committed crimes against the peace or serious non-political crimes, that is, who has a criminal record and has been found guilty of such crimes by enforceable sentences, may be considered a refugee.

Included in those who have committed crimes against the peace and non-political crimes are those who have committed acts of terrorism, kidnappings or massacres or participated in the military wing of a drug trafficking operation.

Under article 9 of the 1951 Geneva Convention, which provides that States parties may take measures which it considers to be essential to the national security in the case of a particular person, the Commission on the Status of Refugees in Ecuador systematically denies refugee status to anyone who confesses to having participated in subversive groups or committed acts of terrorism, crimes against the peace or serious non-political crimes, or who is alleged to have committed such acts.

In order to standardize criteria and procedures, and thus avoid granting protection to persons whose background would exclude them, the Ministry of Foreign Affairs is preparing instructions for immigration authorities and other bodies which receive applications for asylum in Ecuador.

If it is found, after a person is granted refugee status, that he or she has committed any of the aforementioned crimes in the receiving country, he or she shall be subject to due process of law. In such cases the Convention allows for the withdrawal of refugee status, expulsion from the national territory and even return to the country of origin.

Other relevant national legal instruments include the following:

Article 13 of the Political Constitution provides that foreigners shall enjoy the same rights as Ecuadorians, within the limits imposed by the Constitution and law.

The Penal Code, which criminalizes terrorist threats and terrorist activities on foreign instructions and with economic support from abroad and provides for the confiscation of money or assets brought into the country for subversive purposes; it also penalizes those who assist foreign subversive agents to enter and remain in the country or to hide and evade justice (articles 147, 151, 152, 160, 160.1, 165 and 166).

The Immigration Act and its regulations provide for the deportation and exclusion of foreigners who are involved in the activities specified in article 9, paragraphs XIII and XIV, and article 19, and of anyone who seeks to enter Ecuador with the intent of carrying out activities that are harmful to the public interest, or endangering national security by committing terrorist acts.

Article 5 of the Status of Aliens Act provides that the Government of Ecuador may take precautionary measures to prevent alien residents from engaging in political or military activities or promoting internal wars and conflicts.

With regard to police activities, article 183 of the Political Constitution of Ecuador establishes the terms of reference of the National Police, namely, to ensure internal order and individual and collective safety; to that end it has specific functions, as set forth in the Basic Law of the National Police, which include the prevention and suppression of non-political crimes and the control of immigration and residence of foreigners in Ecuador.

To meet this objective, the National Police of Ecuador has the help of the Immigration Service in carrying out its duties and functions as set forth in articles 4 and 5 of the Immigration Act. With respect to procedures applicable to foreigners who seek to enter the country in order to carry out activities that are harmful to the public interest or undermine the status or security of Ecuadorian nationals (art. 9, para. XIV), they are immediately prohibited entry by the Immigration Service at the ports or airports and border checkpoints.

As for deportation, once it has been determined that a foreigner is in the country illegally without having passed through immigration control; or is involved in the activities which are grounds for exclusion; or has been sentenced in Ecuador or is an ordinary offender who may not be tried in Ecuador for lack of jurisdiction (international requirements), he or she is turned over to the Police Inspector-General after the immigration authority has been informed. The latter, who is responsible for the deportation procedure, initiates the proceedings and, within 24 hours, orders the defendant to appear, together with a representative of the Public Prosecutor's Office and a defence lawyer to present the legal arguments, if any. If such arguments are not found to be valid, the Police Inspector-General must, within 24 hours, make a ruling on the deportation. Only in the case of a ruling in favour of the defendant, such as dismissal of the suit, may the case be referred to the Minister of Government, within three days following the date of the ruling.

Deportation is a measure that allows for immediate ejection of foreigners who are involved in activities in violation of the Immigration and Status of Aliens Act and the Penal Code, including foreign nationals whose extradition has not been requested through the diplomatic channel who are sought by judicial authorities abroad.

During this police procedure, the Immigration Service coordinates its activities in order to request criminal records from the Judicial Police and the National Central Office (OCN) of Interpol in Quito, in support of the fight against international organized crime. The Interpol office conducts background checks of foreigners in their countries of origin and other countries in order to make the information available to the competent authorities for the purposes of deportation, expulsion, exclusion and/or extradition, as appropriate.

For the granting of immigrant visas, the Status of Aliens Office requests the verification of criminal records of foreigners in their countries of origin through the Interpol office (OCN) in Quito, which requests cooperation from its counterparts.

Subparagraph 2 (d):

Please provide an outline of the relevant legal provisions and other measures that ensure that the territory of Ecuador is not used for the commission of terrorist acts outside Ecuador.

Various laws contain provisions that provide, on the basis of the Constitution of the Republic, under which international law is the rule of conduct for States in their reciprocal relations, for the prohibition of the use or threat of force and for the promotion of the peaceful settlement of disputes. Another relevant law is the National Security Act, which stipulates that an effort must be made to counteract negative external and internal factors through political, economic, social and even military precautionary measures and actions.

Thus, the legal provisions which Ecuadorian authorities are empowered to enforce to prevent persons supporting terrorism from using the national territory for the commission of terrorist acts outside Ecuador include: the Political Constitution of the Republic, the National Security Act, the Penal Code, the Code of Criminal Procedure, the Immigration Act and the relevant international conventions signed by Ecuador.

The measures are used for controlling borders, customs and migration throughout the national territory.

Subparagraph 2 (e):

What is the competence of the courts in Ecuador to deal with criminal acts of each of the following kinds:

- **An act committed outside Ecuador by a citizen or by a person who is habitually a resident of Ecuador (whether that person is currently present or not);**
- **An act committed outside Ecuador by a foreign national who is currently present in Ecuador.**

In the first case, under the rules of interpretation of the Civil Code, acts committed outside Ecuador by a national or resident of Ecuador must be tried by a judge from the jurisdiction where the offence was committed.

In the case of Ecuadorians, who, pursuant to article 25 of the Political Constitution of Ecuador, may not be extradited, the lower and higher courts of Ecuador are competent to try them, provided that the authorities of the State where the offence was committed so request, for which they must provide sufficient evidence of the commission of the offence and it must have been classified as an offence at the time of the initiation of the criminal proceedings.

Where a foreigner, after committing a crime, takes refuge in Ecuador or resides in the country and seeks to evade justice, the Supreme Court of Justice is competent to extradite him or her if a request for extradition is made by the other country on the basis of a bilateral or multilateral extradition treaty, or of the principle of reciprocity in a case where there is no legal instrument of this type.

If the act was committed outside Ecuador by a foreigner currently in Ecuador, the lower or higher courts may request that person's detention in order to initiate a deportation or extradition procedure depending on whether the person is legally in the country, in accordance with his or her immigration status.

The competence of Ecuadorian courts is established by the provisions of the Penal Code and the Extradition Act.

Penal Code: Territoriality of the penal regime. Article 5, paragraph 3.

Any national or foreigner who commits any of the following offences shall be punishable under Ecuadorian law:

1 (a) Offences against the State;

2 (a) Offences involving the counterfeiting of State seals, or the use of counterfeit seals;

3 (a) Offences involving the counterfeiting of coins or bills of the Central Bank legally in use in the State, or of certified securities or Ecuadorian bonds;

4 (a) Offences committed by government employees, abusing their powers or violating the obligations inherent in their duties;

5 (a) Violations of international law; and

6 (a) Any other offence for which the special provisions of law or international conventions establish the competence of Ecuadorian law.

Foreigners who commit any of the above-mentioned offences shall be tried and punished under Ecuadorian laws, provided that they are apprehended in Ecuador, or that their extradition is obtained.

Article 6. Extradition shall be carried out wherever and however determined by the Constitution, the relevant laws and the Code of Criminal Procedure.

Article 7. (Replaces the First Final Provision of Act No. 2000-24, R.O. 144-S, of 18 August 2000.) Any Ecuadorian who, besides the cases provided for in the previous article, commits a crime abroad for which Ecuadorian law has established a penalty of more than one year's imprisonment shall be penalized under Ecuadorian criminal law, provided that the person is currently present in Ecuadorian territory.

Extradition Act: Article 5. Extradition shall not be granted in the following cases:

(1) Those involving foreigners accused of crimes which fall under the competence of Ecuadorian judges and courts, under domestic law.

In cases where extradition is denied pursuant to the previous paragraph, if the State in which the acts were committed so requests, the Ecuadorian Government shall submit a report on the act which motivated the request to the Public Prosecutor, so that he may initiate judicial proceedings against the person whose extradition is sought. In such cases, the requesting State shall be requested to submit the documents relating to past judicial proceedings so that the proceedings may be continued in Ecuador.

In cases where the crime was committed outside the requesting State, extradition may be denied if Ecuadorian law does not allow for the prosecution of a crime of the same type committed outside Ecuador.

(2) Those involving political offences. The following shall not be considered political offences: acts of terrorism; crimes against humanity as set forth in the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly; or an attack on the life of a head of State or any member of his family. Nor shall ordinary offences, even when committed for political motives, be considered political crimes.

(3) Those involving military offences criminalized by Ecuadorian military criminal law, without prejudice to the relevant provisions of international treaties signed and ratified by Ecuador; those committed through the communications media in the exercise of the right to freedom of expression; and crimes subject to private prosecution.

(4) Those where the person whose extradition is sought must be judged by an extraordinary court.

(5) Those where the prescription of the action or penalty has been verified under Ecuadorian law or the law of the requesting State.

(6) Those where the person whose extradition is sought has been tried, judged, sentenced or absolved in Ecuador for the same acts on which the request for extradition is based. Extradition may be granted, however, where a refusal order has been handed down, putting an end to the criminal proceedings for the acts in question, provided that this order was not based on a dismissal or any other decision having a *res judicata* effect.

(7) Those where the requesting State refuses to give an undertaking that the person whose extradition is requested will not be executed or subject to corporal punishment or inhuman or degrading treatment.

(8) Those where the requesting State has refused to give the undertakings required under article 3 of this Act.

(9) Those where the person whose extradition is sought has been recognized as a political refugee, provided that he or she is not sought for another offence that would merit extradition. The non-recognition of the status of political refugee, whatever its grounds, shall not prevent the denial of extradition on any of the grounds provided for in this Act.

Article 6. Extradition may be denied:

(1) If there are substantial grounds for believing that a request for extradition for an ordinary criminal offence has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, political opinion or sexual orientation or that that person's position may be prejudiced for any of those reasons;

(2) If the person whose extradition is sought is less than 18 years of age at the time of the request for extradition and, if he or she habitually resides in Ecuador, it is considered that extradition may prevent his or her social reintegration, without prejudice to the taking of the most appropriate measures in agreement with the authorities of the requesting State.

Subparagraph 2 (f):

Please describe the procedure in Ecuador to deal with the requests of Member States for assistance in criminal investigations or in criminal proceedings.

Requests for assistance and collaboration in criminal matters between Member States are processed by the Ministry of Foreign Affairs, which plays the role of intermediary between the requesting State and the judicial bodies responsible for providing such assistance.

Requests may be made in the form of commissions or letters rogatory or requests for judicial assistance, duly processed, legalized and, where appropriate, translated into Spanish.

OCN-Interpol in Quito is an agency of the National Police of Ecuador — National Office of Judicial Police, and is a part of the International Criminal Police Organization (Interpol).

Under article 2 of the Constitution of the International Criminal Police Organization, one of the aims of Interpol is to promote mutual international assistance in the prevention and punishment of ordinary crimes and thus to enable Member States to cooperate in the exchange of information for purposes of investigation and tracking down fugitives from international justice; it serves as a channel for transmitting requests for reciprocal judicial assistance (letters and commissions rogatory) in cases provided for in international agreements to which Ecuador is a party (United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, International Convention against Transnational Organized Crime and bilateral extradition treaties, among others).

With regard to criminal investigation, the OCNs, through their X-400 system (electronic mail), transmit their requests instantly, on behalf of the police, judicial or government authorities, for information, criminal records, verification of true identity, verification of legality of travel and naturalization papers, verification of judicial processes, and other investigations.

With regard to the tracking down of fugitives from international justice, Interpol-Quito receives and transmits requests that they be found and detained for purposes of extradition, in accordance with the Extradition Act, international agreements and its own statutes. To that end, it transmits the red alerts issued by the General Secretariat of Interpol (in Lyon, France) to the national immigration and judicial police services.

Operationally, Interpol acts in cooperation with police forces, other similar agencies in third countries and liaison officials, and in coordination with the consulates of the various countries.

At the same time, Ecuador, in the effort to combat drug trafficking, complies with requests for mutual police assistance under the provisions of the 1988 United Nations Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances and a number of bilateral treaties; this cooperation is important because of the potential relationship between drug trafficking and terrorism, with the former being used to finance the latter.

Subparagraph 2 (g):

Please describe the measures taken by Ecuador to upgrade and modernize its border control systems and identification documents to prevent the movement of terrorists across its borders.

(1) In relation to border control:

(a) The armed forces have strengthened their presence on the borders, especially on the border between Colombia and Ecuador, taking steps such as: establishment of new units, adaptation of organizational units, operational redeployments, improvement of intelligence systems and modernization of strategic mobility capacity. Measures have also been taken to:

- Modernize the materiel and equipment required to neutralize and/or destroy any threats to national security;
- Develop information networks through SURNET and in the framework of national and bilateral intelligence meetings with various countries;

- Activate control systems at border posts to prevent free cross-border movement and detain citizens identified as possible terrorists;

- Optimize mechanisms for exchanging information at bilateral intelligence meetings, both national and regional, on terrorist groups, on trafficking in weapons, ammunition, explosives and related materials and on potential threats in the national or regional context.

(b) The National Police of Ecuador have strengthened their urban, immigration, anti-narcotics, transit, judicial and environmental departments, among others, in the effort to prevent and punish crime.

To that end, the Police have begun to exert greater control at the border through integrated checkpoints, especially in the border area between Colombia and Ecuador, where staff from the elite units (Intervention and Rescue Group) have been deployed, and through the incorporation of new elements in the institution itself and the assignment of a large contingent of police officers to serve in the border provinces of Esmeraldas, Carchi, Sucumbos and Orellana. Furthermore, with regard to vehicular control, Ecuador and Colombia jointly apply the agreed regulations on transborder land transit between Ecuador and Colombia.

In compliance with bilateral treaties and the agreement establishing the Andean Community, it has cooperated in the operation of national and bilateral border posts (CENAF and CEBAF), staffed by members of the immigration, transit and judicial police services.

With regard to immigration control and, specifically, to the granting of visas, the Ministry of Foreign Affairs adopted a new visa system in May 2002, which entails the use of a high-security adhesive and requires a photograph of the visa holder. At the same time, a database has been set up containing complete information on the visa holder.

During a second stage, the above-mentioned system will be extended to the main consulates in Ecuador, and, during a third stage, an online service will be established through the Internet to allow for instant access to the information in the databases of the Ministry of Foreign Affairs and consular offices. Lastly, the Ministry of Foreign Affairs hopes to extend the system to other national agencies that deal with immigration, especially the National Immigration Office, since this will make it easier to check information on applicants and will reinforce security mechanisms to identify potentially undesirable persons.

The Immigration Service at the borders maintains strict control over ports, airports and border posts to detect the presence of foreign citizens with criminal records; it coordinates its work with the other police services, mainly the National Central Office of Interpol (OCN) in Quito, which keeps a file on fugitives from international justice.

At the Quito and Guayaquil international airports, a computerized system to control entry and exit of nationals and foreigners has been set up to obtain immediate information on migratory movements or judicial requests.

(2) In relation to identification documents:

To detect counterfeit travel documents and visas, the National Immigration Office in the Ministry of Government carries out surveillance operations in

coordination with the various agencies that issue documents and grant visas, namely, the Civil Registry, the Office of Travel Documents in the Ministry of Foreign Affairs, the Office of Alien Status in the Ministry of Government and the Office of Immigration Affairs in the Ministry of Foreign Affairs, together with embassies and consulates.

The Government of Ecuador has affirmed its desire to comply with Andean Community decisions 503 and 504, on national identity papers and on the Andean passport, whose aim is to facilitate the travel of persons in the Community area. These decisions are being implemented, however, in the context of a broad plan which includes a series of measures, with particular emphasis on the harmonization of laws, coordination among the parties and immigration.

With respect to the recognition of national identity papers (decision 503), the decision is being followed up at the Andean level with a view to promoting its effective implementation, especially with regard to cooperation in immigration matters, including, among other things, the exchange of information and immigration control.

As for passports, Ecuador was the first country in the Andean Community to implement decision 504, on the Andean passport. The Andean Passport of Ecuador, which has a high degree of technical sophistication and security, became valid on 1 July 2002. In the plan to personalize the new high-security Ecuadorian passport, provisions have been made for checking travel documents at international airports and land border posts, using modern computerized equipment.

Lastly, an agreement was recently signed between the Ministry of Foreign Affairs and the Civil Registry Office which provides that passport-issuing offices in Ecuador, immigration officials and about 60 Ecuadorian consulates abroad may check the identity of Ecuadorian citizens by consulting the civil registry databases.

Please describe the inter-agency coordination mechanism that exists in Ecuador among the agencies responsible for narcotics control, financial tracking, security and, in particular, border control.

Depending on the nature of the matter, coordination takes place between the following institutions:

Control of narcotic drugs:

National Police, Ecuadorian Customs Corporation (CAE) and the National Council on Narcotic Drugs and Psychotropic Substances (CONSEP).

Financial tracking:

National Police, Superintendency of Banking, CONSEP and the Office of the Public Prosecutor.

Security and border control:

Armed forces and National Police.

Within CONSEP, the Unit for Processing of Classified Information (UPIR-DN) deals with financial tracking, and the National Office of Control and Supervision controls narcotic drugs, psychotropic and specific chemical substances, which are listed in the annexes to the Narcotic Drugs and Psychotropic Substances Act. To that end: (a) it exchanges information with the National Anti-Narcotics Office of the

National Police and with the Customs Surveillance Service; (b) it participates in special operations such as "Operation *Seis Fronteras*", for which an inter-agency group called "GEICOFI" was formed, composed of representatives of CONSEP, the National Anti-Narcotics Office of the National Police and the Customs Surveillance Service; (c) in the border provinces such as El Oro and Carchi, arrivals of imported chemical substances are checked; (d) laboratories, importers and distributors of medications containing narcotic drugs and psychotropic substances are controlled and monitored.

With regard to the financial system, as indicated above, financial institutions must fully and sufficiently disclose to CONSEP, through the Superintendency of Banks, all transactions whose characteristics suggest that they may be money-laundering operations. They are also required to submit a monthly report on operations that equal or exceed $10,000 or its equivalent in other currencies.

On the military side, existing coordination mechanisms operate through the national and military intelligence systems, plans and directives, liaison officials and representatives of the armed forces in the relevant agencies responsible for controlling narcotic drugs, financial tracking, security and border controls.

Subparagraphs 3 (a), (b) and (c):

Please explain how Ecuador proposes to comply with the requirements of these subparagraphs.

It proposes to comply by strengthening existing judicial, police and administrative agreements, and by jointly elaborating similar instruments with other countries and agreements among police intelligence, military and civilian agencies based on modern computerized information systems at periodic bilateral or multilateral intelligence meetings. It also proposes, with regard to the police, to facilitate the exchange of files, evidence and, occasionally, special intelligence procedures in order to break up terrorist groups.

The Superintendency of Telecommunications is the agency responsible for all technical and administrative control of communications. To carry out its functions, this agency must make the necessary inspections and tests to verify whether the service is authorized by the competent authority, evaluate the precision, quality and reliability of the system in operation and establish the technical specifications for the operation of the radio, television or telecommunications system.

The Superintendency of Telecommunications has the authority to prosecute, at the administrative level, any natural or legal persons who commit infractions under the above-mentioned laws and apply sanctions if they do not operate in accordance with the parameters granted or if the telecommunications systems do not have the proper licence; the last-mentioned case constitutes an administrative offence categorized in article 28 (a) of the Special Telecommunications Act, for which the maximum penalty provided for therein is imposed.

Act No. 99-38, published in *Official Gazette* No. 253 of 12 August 1999, appends the following provision to article 422 of the Penal Code:

> "Anyone who offers, provides or sells telecommunications services, without being legally authorized to do so, through concession, authorization, licence, permit, agreement or any form of administrative contract, excepting

the use of Internet services, shall be subject to a penalty of two to five years' imprisonment. Included in this provision are those who are in clandestine possession of equipment whose configuration and other technical features indicate that one of its purposes is to offer the services referred to in the preceding paragraph, even though it is not being used. The penalties set forth in this article shall apply without prejudice to the administrative and civil liabilities provided for in the Special Telecommunications Act and its Regulations".

With respect to this offence, the Superintendency of Telecommunications is coordinating activities with the operators of telecommunications services, the Public Prosecutor's Office and the National Police to carry out investigations; once unlawful conduct has been detected, the equipment that has been used to provide unauthorized telecommunications services is seized and remains in the hands of the judicial police as evidence in the ensuing criminal proceedings.

Please outline the bilateral arrangements, if any, that Ecuador has with its neighbours, as well as other Member States, in regard to cooperation in matters relating to anti-terrorism, mutual assistance and extradition.

Ecuador has not signed any bilateral agreements on terrorism; however, it has signed the Inter-American Convention against Terrorism.

With regard to mutual assistance, Ecuador has signed a number of international instruments on bilateral cooperation between countries, such as the United Nations Convention against Transnational Organized Crime and the Inter-American Convention on Letters Rogatory.

Ecuador has signed extradition agreements with Australia, Belgium, Bahamas, Bolivia, Brazil, Canada, Chile, Colombia, France, Guinea, Kenya, Pakistan, Spain, Swaziland, Switzerland, Tanzania, Uganda, United Kingdom of Great Britain and Northern Ireland and United States of America.

It applies the Inter-American Convention on Extradition to countries of the Americas with which it has no bilateral agreement, and it applies the principle of reciprocity to those countries with which no international instrument exists.

Subparagraph 3 (d):

The Counter-Terrorism Committee would welcome a report, in relation to the international conventions and protocols relating to terrorism, of the progress achieved by Ecuador in:

- **Enacting the necessary legislation or making other arrangements to implement the instruments to which it is a party;**

Article 4 of the Constitution provides that international law is the rule of conduct of States in their mutual relations. Article 163 of the Constitution establishes that "[T]he rules set forth in international treaties and agreements, once they have been promulgated in the *Official Gazette*, shall become part of the legal system of the Republic and shall take precedence over lower-level laws and other rules". Therefore, the international instruments on terrorism signed, ratified and promulgated by Ecuador have become part of its domestic legislation.

– Becoming a party to the instruments to which it is not yet a party.

The following international agreements are in force in Ecuador and therefore form part of its domestic legislation.

- Convention on Offences and Certain Other Acts Committed on Board Aircraft;
- Convention for the Suppression of Unlawful Seizure of Aircraft;
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation;
- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents;
- Convention against the Taking of Hostages;
- Convention on the Physical Protection of Nuclear Material;
- Convention on the Marking of Plastic Explosives for the Purpose of Detection.

In addition, the following instruments are under consideration for parliamentary ratification:

- Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation;
- Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation;
- Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf;
- International Convention for the Suppression of the Financing of Terrorism;
- Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes against Persons and Related Extortion that are of International Significance;
- Inter-American Convention on Forced Disappearance of Persons; and
- Inter-American Convention against Terrorism.

Subparagraph 3 (e):

Have the crimes mentioned in the relevant international conventions and protocols been included as extraditable offences in the bilateral treaties to which Ecuador is party?

The international conventions and protocols are part of national legislation and their rules must be respected under the provisions of the Political Constitution of the Republic.

Obviously, where multilateral and bilateral agreements signed by Ecuador exist, extradition takes place, since the latter is generally prescribed for any offence for which the penalty is at least one year's imprisonment. Terrorism is punishable with higher penalties.

Subparagraph 3 (f):

Please describe the measures in place for the purpose of ensuring before granting refugee status that an asylum-seeker has not planned, facilitated or participated in the commission of terrorist acts.

The Ministry of Foreign Affairs has an office for liaison with the National Police, whose representative is a member of the Commission on the Status of Refugees and is thus able to keep abreast of each case as it arises.

The Ministry of Foreign Affairs, which presides over the Commission on the Status of Refugees, is in permanent contact with units of the National Police and armed forces, in order to determine the origin and background of asylum-seekers. This coordination facilitates the implementation of article 28 of Decree No. 3301, which states: "Refugees admitted to Ecuador undertake to respect the Constitution and laws of the Republic and not to interfere in political or other affairs that might undermine national security or the domestic or external interests of Ecuador".

Another control mechanism is the requirement that the visa for refugees must be renewed each year. This fact enables the Ministry of Foreign Affairs to withdraw the refugee status, if it considers that the grounds for such status no longer exist or it finds that the refugee is participating or has participated in irregular armed groups.

The National Immigration Office of the National Police, through its national divisions and subdivisions, keeps a record of persons who have been admitted to Ecuador as refugees in order to monitor these persons' activities at their place of residence in the country.

Registration and census-taking also provide a verification mechanism, pursuant to article 4, paragraph VI, of the Immigration Act. The census is conducted annually and verifies information on residence, activities, length of stay and movements within and outside Ecuador.

Subparagraph 3 (g):

Please clarify whether claims of political motivation are recognized as grounds for refusing requests for the extradition of alleged terrorists.

In that regard, article 5 of the Extradition Act establishes that "[E]xtradition shall not be granted in the following cases: ... (2) Those involving political offences. The following shall not be considered political offences: acts of terrorism, crimes against humanity as set forth in the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly, or an attack on the life of a head of State or any member of his family. Nor shall ordinary offences, even when committed for political motives, be considered political offences".

Paragraph 4:

Has Ecuador addressed any of the concerns expressed in paragraph 4 of the resolution?

The military front has strengthened its presence, especially on the northern border, and the activities of the intelligence system have been assessed and

prioritized at the national, community and regional levels, depending on their field of competence and compliance with their constitutional mission.

The Superintendency of Banks and Insurance is currently developing and executing a programme to control money-laundering, which will enable it to supervise Ecuadorian financial institutions appropriately and efficiently in order to prevent the latter from being used or involved in operations with the proceeds of unlawful activities.

This programme is being implemented in stages. Initially, international consultants on the subject were hired; they issued their conclusions and recommendations, pointing out the need to elaborate and promote a specific bill to counteract money-laundering and combat the financing of terrorism.

The National Council on Narcotic Drugs and Psychotropic Substances (CONSEP) is in constant contact with those involved in preventing unlawful activities and plans to sign bilateral agreements for the purposes of international cooperation on the matter.

The Superintendency of Companies is working on boosting the strength of the following control mechanisms:

At the company level, it seeks to deepen economic and financial analyses, on the basis of the following criteria:

(a) Significant changes in current accounts;

(b) Increases and decreases in investments;

(c) Significant variations in accounts and notes receivable;

(d) Significant increases or decreases in inventories;

(e) Buying or selling of fixed assets for significant sums;

(f) Considerable increases in deferred or other assets;

(g) Large increases or decreases in accounts or notes receivable;

(h) Provision of capital from head offices or from abroad;

(i) Excessive investments in future capitalizations;

(j) Analysis of income;

(k) Analysis of expenditure;

(l) Origin and destination of funds;

(m) Transfer of stocks and shares.

With regard to the stock market, the Superintendency of Companies will reinforce controls by:

(a) Imposing fines, ordering the closing and liquidation of companies which have helped these groups;

(b) Verifying that companies under its supervision have no commercial ties with foreign firms that are assisting these groups; to this end it must work jointly with other government offices, which must provide the necessary data for the identification of foreign firms involved in these activities;

(c) Verifying that companies under the supervision of the Superintendency of Companies are not carrying out commercial operations directly or indirectly related to terrorism, and imposing the appropriate fines or closing down the operations of these companies;

(d) Verifying whether natural or legal persons that have been found to be protectors of terrorist activities have made investments in corporations in Ecuador, and ordering these companies to close down, after amending the Companies Act;

(e) Setting up a database of stock market investors, which would be connected to the principal government agencies and international organizations;

(f) Training its staff in the tracking of proceeds from drug trafficking or other unlawful activities as a source of financing for companies;

(g) Signing agreements on exchange of information with government agencies, such as the National Police, National Anti-Narcotics Office, Internal Revenue Service, Office of the State Comptroller, Civil Registry and others;

(h) Finding sources of financing for the incorporation of better technologies and training of personnel in the specific areas in which the institution is involved, in order to control, exhaustively and precisely, any resources that may be related to terrorist activities; this will make it possible to work together with international organizations to establish more precisely the destination and source of resources that circulate in this market;

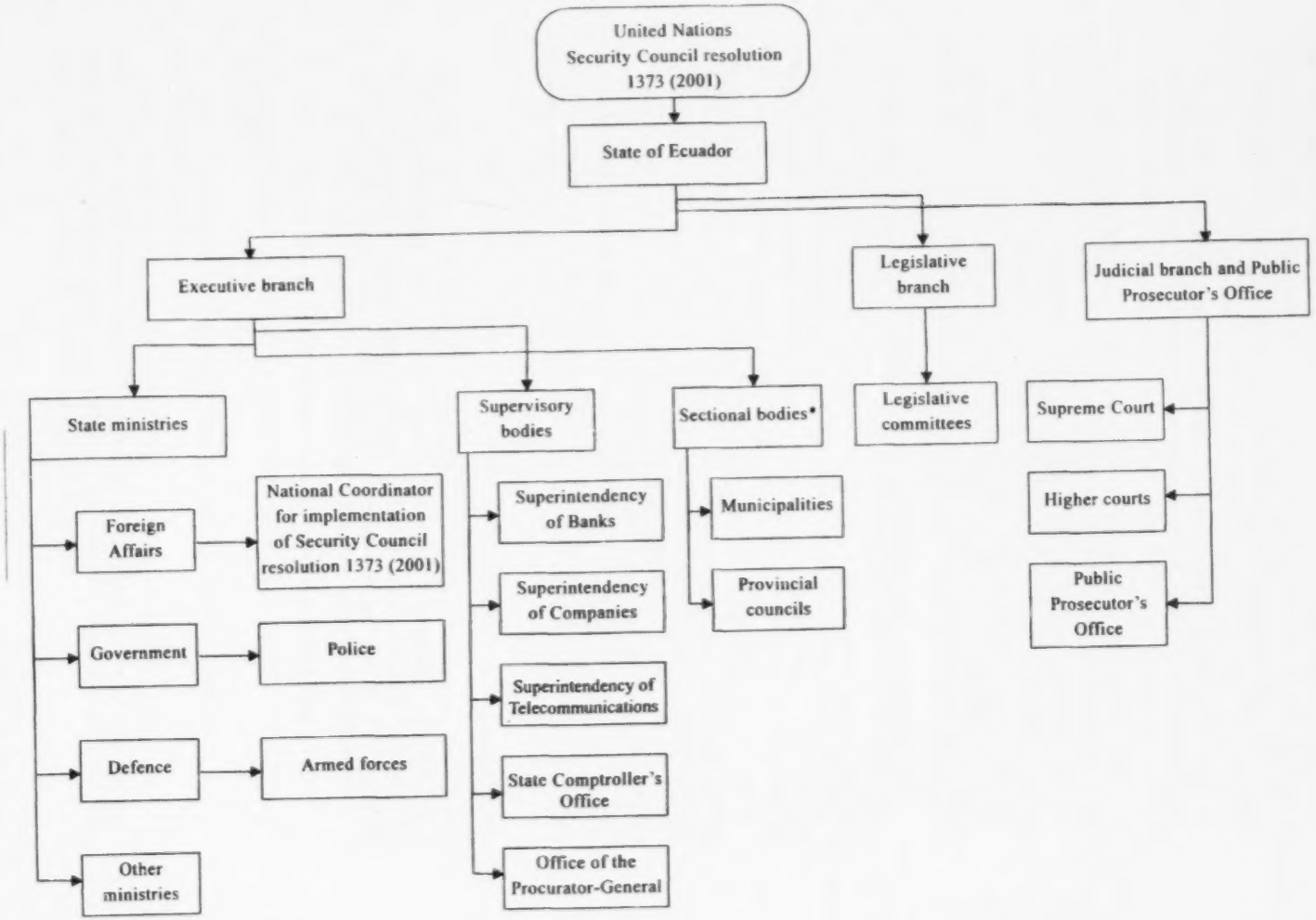
(i) Elaborating an amendment to the Regulations on Fiduciary Transactions, bearing in mind that resources may be channelled to terrorism through such transactions; this will allow the Superintendency of Companies to find out from the information provided by each trust fund what activities will be carried out with such transactions; under current regulations, this information is received only from those funds which, because of their characteristics, must register in the Stock Market Registry. This amendment will also satisfy some, if not all, of the concerns pointed out in part "A" of the Plan of Work of the Inter-American Committee against Terrorism (CICTE).

Other matters:

Could Ecuador please provide an organizational chart of its administrative machinery, such as police, immigration control, customs, taxation and financial supervision authorities, established to give practical effect to the laws, regulations and other documents that are seen as contributing to compliance with the resolution.

See the organizational chart on the next page and annex 2.

22 **Organizational chart of Ecuadorian machinery established to implement Security Council resolution 1373 (2001)**



* Related to NGO programmes.